

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

TRACBEAM, L.L.C.,

Plaintiff,

v.

AT&T INC.; AT&T MOBILITY L.L.C.;
METROPCS COMMUNICATIONS, INC.;
METROPCS WIRELESS, INC.; TEXAS RSA 7B3,
L.P. d/b/a PEOPLES WIRELESS SERVICES;
SPRINT NEXTEL CORPORATION; SPRINT
SPECTRUM L.P.; NEXTEL OF CALIFORNIA,
INC.; NEXTEL COMMUNICATIONS OF THE
MID-ATLANTIC, INC.; NEXTEL OF NEW
YORK, INC.; NEXTEL SOUTH CORP.; NEXTEL
OF TEXAS, INC.; NEXTEL WEST CORP.;
CELLCO PARTNERSHIP d/b/a VERIZON
WIRELESS; GOOGLE, INC.; and SKYHOOK
WIRELESS, INC.,

Defendants,

TELECOMMUNICATION SYSTEMS, INC.,

Consolidated Defendant,

and

LOCATION LABS,

Intervenor.

Case No. 6:11-cv-00096-LED

JURY TRIAL DEMANDED

**DEFENDANTS' MOTION FOR PARTIAL SUMMARY JUDGMENT OF INVALIDITY
BASED ON INDEFINITENESS**

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Exhibit 1	U.S. Patent No. 7,764,231
Exhibit 2	U.S. Patent No. 7,525,484
Exhibit 3	Expert Declaration of Dr. Vijay Madisetti

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Appendix A	Text of Relevant Claims (with highlights)
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¹ Each of these Exhibits and the Appendix are attached to the concurrently filed Declaration of Jon V. Swenson (“Swenson Decl.”). The Exhibits will be referenced as “Ex. [#]” in this Motion.

I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 56 and the Court's Order granting permission (Dkt. No. 311), Defendants² move for partial summary judgment of invalidity based on indefiniteness of asserted Claims 1, 10, and 185 of U.S. Patent No. 7,764,231 (the "'231 Patent") and asserted Claim 27 of U.S. Patent No. 7,525,484 (the "'484 Patent") (and thus their respective dependent claims).³ Those claims are indefinite (and therefore invalid under 35 U.S.C. § 112, ¶ 2) because they include certain terms and phrases that are so vague as to render the claims insolubly ambiguous to a person of ordinary skill in the art at the time the patent applications were filed.

II. STATEMENT OF ISSUES

1. Whether independent Claim 1 of the '231 Patent is indefinite because the "when available" limitations are insolubly ambiguous.
2. Whether independent Claim 185 of the '231 Patent is indefinite because there is no way to determine which mobile stations make up the set of mobile stations designated as "M_p."
3. Whether independent Claim 27 of the '484 Patent and independent Claim 10 of the '231 Patent are indefinite because there is no way to distinguish between the "input requests" and "location requests."
4. Whether independent Claim 27 of the '484 Patent and independent Claim 10 of the '231 Patent are indefinite because the phrase "wherein for at least one of said first and second output criteria there is an output criteria for another of the location requests that is different from said at least one output criteria" is insolubly ambiguous.

² This Motion is filed on behalf of AT&T Inc. and AT&T Mobility LLC ("AT&T"), MetroPCS Communications, Inc. and MetroPCS Wireless, Inc. ("MetroPCS"), Cellco Partnership ("Cellco"), Google, Inc. ("Google"), Skyhook Wireless, Inc. ("Skyhook"), TeleCommunication Systems, Inc. ("TCS"), and Location Labs. Each Defendant moves for summary judgment only with respect to the implicated claims in this Motion asserted against that Defendant. However, no Defendant opposes this Motion with respect to the implicated claims not asserted against it. Due to the summary judgment page limitations coupled with the sheer length of the claims and the patents in suit, Defendants are focusing this Motion on the clearest candidates for invalidity under § 112, ¶ 2; Defendants reserve all rights to raise additional indefiniteness arguments identified in their Invalidity Contentions at an appropriate juncture in this case.

³ Of course, a determination that an independent claim is invalid for indefiniteness also invalidates all claims depending therefrom under § 112, ¶ 2. *See, e.g., Mossman v. Broderbund Software, Inc.*, 1999 U. S. Dist. LEXIS 8014, *24 (E.D. Mich. May 18, 1999) ("Claim 1 of the '173 patent is therefore fatally indefinite. Because claim 1 fails, so to does claims 2-4 which depend on claim 1."). *Accord Datamize, LLC v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347, 1356 (Fed. Cir. 2005); *Ariba, Inc. v. Emptoris, Inc.*, 2008 U.S. Dist. LEXIS 59862, *24-25 (E.D. Tex. Aug. 7, 2008).

III. STATEMENT OF UNDISPUTED MATERIAL FACTS

The undisputed material facts are the language of the claims and the content of the specifications of the '231 and '484 Patents. (*See* Swenson Decl., Appendix A.)⁴

IV. LEGAL STANDARD

Patent claims must be sufficiently definite such that a person of ordinary skill in the art can understand what is claimed, and potential competitors can determine whether or not they are infringing. 35 U.S.C. § 112 ¶ 2; *Morton Int'l, Inc. v. Cardinal Chem. Co.*, 5 F.3d 1464, 1470 (Fed. Cir. 1993). A claim is indefinite if it is “not amenable to construction.” *Datamize, L.L.C. v. Plumtree Software, Inc.*, 417 F.3d 1342, 1347 (Fed. Cir. 2005). In other words, a claim is indefinite if “a skilled artisan could not discern the boundaries of the claim based on the claim language, the specification, and the prosecution history, as well as her knowledge of the relevant art area.” *Halliburton Energy Servs., Inc. v. M-I LLC*, 514 F.3d 1244, 1249-50 (Fed. Cir. 2008).

Indefiniteness is a question of law for the court to decide as part of its duty to construe the claims. *See IPXL Holdings, L.L.C. v. Amazon.com, Inc.*, 430 F.3d 1377, 1380 (Fed. Cir. 2005). If even a single phrase renders a claim indefinite, that claim and every claim depending from it are invalid. *See, e.g., Halliburton*, 514 F.3d at 1249; *Datamize*, 417 F.3d at 1356. Where the claims are not sufficiently precise, summary judgment of invalidity based on indefiniteness is required as a matter of law. *Id.*

⁴ For the Court's convenience, the relevant claims are reproduced in Appendix A with highlighted text and labels for each claim element. Where appropriate, this Motion references specific claim elements using the labels from Appendix A. Throughout this Motion, quoted language from the claims may be highlighted for emphasis.

V. ARGUMENT

A. The “when available” limitations of Claim 1 of the ‘231 Patent are insolubly ambiguous

Claim 1 of the ‘231 Patent is invalid as indefinite under § 112, ¶ 2 because the “when available” limitations are insolubly ambiguous. Claim 1 requires “*location related information*” to be *received* from location estimation determiners *that provide “geographical indications”* of the location of a mobile station. Claim 1 subsequently recites that “when available,” the “location related information” includes a “geographical indication” for a location of the mobile station. However, there is no way to determine whether the “when available” language refers to the “location related information” or the “geographical indication.” Moreover, regardless of which of those items the “when available” language does refer to, it is insolubly ambiguous how either of those items could possibly be *unavailable* when they have both *already been received* in the claimed method.

The following are the relevant limitations of Claim 1 of the ‘231 Patent:⁵

receiving first and second location related information, respectively, from computational machinery performing first and second mobile station location estimation determiners, wherein said location estimation determiners provide different geographical indications of an unknown location of said mobile station M when said location estimation determiners are supplied with corresponding input data obtained using wireless signal measurements obtained by transmissions between said mobile station M and the communication stations;

wherein, when available, the first location related information includes at least a first geographical indication for a location of the mobile station M; [and]

wherein, when available, the second location related information includes at least a second geographical indication for the location of the mobile station M;

....

From a grammatical perspective, “when available” appears to refer to the availability of the “first and second location related information” since either the “first location related

⁵ See Appendix A, claim elements 1(b, c, d) (emphasis added).

information” or the “second location related information” immediately follow it. Based on a closer look at Claim 1 and its dependent claims, however, there is no way to ascertain what claim language “when available” is intended to modify. For example, dependent Claim 212 requires using a coverage area technique “when the first location related information is *unavailable*,” which suggests that “when available” in Claim 1 does indeed refer to the first and second “location related information.”⁶ Dependent Claim 217, on the other hand, makes evident that the first geographical indication is not always available, suggesting that “when available” in Claim 1 is actually referring to the first and second “geographical indication[s].”⁷ These dependent claims provide conflicting guidance on the proper interpretation of the ambiguous “when available” recitations.

Moreover, irrespective of the ambiguity in whether “when available” modifies the “location related information” or the “geographical indications,” Claim 1 is also indefinite because it is insolubly ambiguous how either of those claim terms could possibly be “unavailable” when they have both *already been received* in the claimed method.⁸ There is no way to determine the scope of the claim without knowing how something that was clearly present, received, and required by the claim (*i.e.*, the “location related information” and the “geographical indication[s]”) subsequently becomes *unavailable*.

⁶ Claim 212 recites: “wherein ... said first location estimation determiner is provided by computational machinery performing *a coverage area location technique* ..., wherein the estimated location is included in the resulting location estimate of the mobile station M *when the first location related information is unavailable* or unsatisfactory for the location L.” See Appendix A, Claim 212 (emphasis added).

⁷ Claim 217 recites: “wherein for at least one occurrence of locating one of the mobile stations for being M, *the first geographical indication is not obtained*” See Appendix A, Claim 217 (emphasis added).

⁸ Claim 1 requires *receiving* the “first and second location related information.” Moreover, given that the “geographical indications” are provided as part of the received “first and second location related information,” they must be received as well. For example, the “first and second location related information” are received from location estimation determiners that “provide different *geographical indications*” of the location of the mobile station. See Appendix A, claim element 1(b) (emphasis added).

Accordingly, the scope of the “when available” language is insolubly ambiguous, rendering Claim 1 of the ‘231 Patent indefinite.

B. Claim 185 of the ‘231 Patent is indefinite because there is no way to determine which mobile stations make up the set of mobile stations designated as “ M_p ”

Claim 185 of the ‘231 Patent is invalid as indefinite because there is no way to determine which mobile stations make up the set of mobile stations designated as “ M_p .” Element (C) of Claim 185 contains the relevant claim language regarding the mobile stations designated as “ M_p ”:

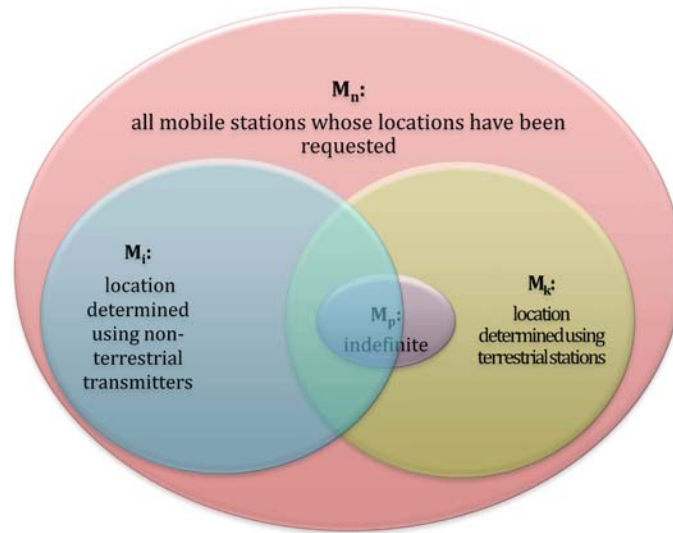
(C) wherein *for at least one mobile station (M_p) of the mobile stations M_k and the corresponding location for M_p according to (B) above, **the location indicative data for M_n is not obtained** using geographic data indicative of a spatial range between the mobile station M_p and one or more transmitting stations above and not supported on the Earth’s surface, wherein **the geographic data would have to be determined** using signals received at the mobile station M_p from the one or more transmitting stations.*⁹

This language is so obscure that coherently articulating its particular infirmities is even a challenge. Nonetheless, at a high level this claim language is indefinite because of numerous deficiencies that render it impossible to identify the mobile stations referenced as M_p .

To provide context, the following sets of mobile stations are identified throughout Claim 185 (which Defendants have mapped into the diagram below):

- mobile stations M_n , which represent a plurality of mobile stations whose locations have been requested;
- mobile stations M_i , which represent the subset of mobile stations M_n whose locations are determined using transmitting stations not supported on the Earth’s surface (*e.g.*, satellites);
- mobile stations M_k , which represent the subset of mobile stations M_n whose locations are determined using one or more terrestrial communication stations; and
- mobile station(s) M_p , which are insolubly ambiguous.

⁹ See Appendix A, claim element 185(j) (emphasis added).



Element (C) of Claim 185 begins by identifying mobile station M_p as being from the set of mobile stations M_k . But Element (C) then further identifies mobile station M_p by explaining that the location indicative data of another mobile station — mobile station M_n — is not obtained using certain geographic data relating to mobile station M_p . This is confusing and ambiguous. For example, there is no way to identify which mobile station M_n is being referenced, since mobile stations M_n represent all mobile stations whose locations have been requested. Moreover, it makes no sense how mobile station M_p could possibly be identified based on the manner in which the location indicative data of another mobile station (M_n) is not obtained. These ambiguities render it impossible to identify which mobile station(s) are being referenced as M_p in this phrase. (See Ex. 3, Expert Declaration of Dr. Vijay Madiseti (“Madiseti Decl.”) at ¶¶ 32-34.)

To add to the confusion, while Element (C) requires the location indicative data of mobile station M_n not to be obtained using certain geographic data relating to mobile station M_p , it simultaneously requires the location indicative data of M_n to be obtained using that same geographic data. Specifically, Element (C) specifies that “the location indicative data for M_n is

not obtained using geographic data indicative of a spatial range between the mobile station M_p and one or more transmitting stations above and not supported on the Earth's surface," while also reciting that the same "geographic data would have to be determined using signals received at the mobile station M_p from the one or more transmitting stations."¹⁰ Thus, Element (C) inconsistently requires the same mobile station M_n to be located both with and without using transmitting stations not supported on the Earth's surface (*e.g.*, satellites). (Madisetti Decl. at ¶ 35.) Again, this makes no sense and further muddles the interpretation of this already ambiguous claim language.

Due to these obscurities, there is no way to discern the boundaries of this claim phrase, and it is impossible to identify which mobile station(s) are being referenced as M_p in this phrase. Accordingly, Claim 185 of the '231 Patent is invalid for indefiniteness. (*See id.* at ¶¶ 25-38.)

C. Claim 27 of the '484 Patent and Claim 10 of the '231 Patent are indefinite

Claim 27 of the '484 Patent and Claim 10 of the '231 Patent are invalid as indefinite due to the following deficiencies: (1) there is no way to distinguish between the claimed "input requests" and "location requests"; and (2) the phrase "wherein for at least one of said first and second output criteria there is an output criteria for another of the location requests that is different from said at least one output criteria" is insolubly ambiguous. These deficiencies each provide an independent basis for invalidating these two claims.

1. There is no way to distinguish between the "input requests" and the "location requests"

Claim 27 of the '484 Patent and Claim 10 of the '231 Patent are both indefinite because there is no way to distinguish between the "input requests" and the "location requests."

¹⁰ See Appendix A, claim element 185(j) (emphasis added).

The following are the relevant portions of Claim 27:¹¹

receiving, from a plurality of location requesting sources, a plurality of input requests for locations of the mobile stations ...;

for each of the input requests, providing one or more location requests for location information, related to a location of one of said mobile stations, to one or more mobile station location determining sources;

first obtaining, in response to a first of the location requests received from a first of the requesting sources, at least first location information of a first location of a first of said mobile stations ...;

second obtaining, in response to a second of the location requests received from a second of the requesting sources, at least second location information of a second location of a second of said mobile stations

In this claim, “input requests” for “locations of the mobile stations” are initially received from location requesting sources. Then, in response to each “input request,” one or more “location requests” for “location information” are provided to one or more location determining sources. Thus, it is evident that the “input requests” and the “location requests” were intended be different things with different meanings.¹² However, while the “location requests” were initially provided in response to the “input requests” received from the location requesting sources, Claim 27 subsequently references the “location requests” (rather than the “input requests”) as also being received from the location requesting sources. This confusing language makes it impossible to distinguish between the scope of these two types of requests. (*See generally* Madisetti Decl. at ¶¶ 39-51.) For example, because both of these types of requests are apparently received from the location requesting sources, there is no way to determine whether a given request from a location requesting source is an “input request” or a “location request.” (*Id.* at ¶¶ 45-46.)

¹¹ See Appendix A, claim elements 27(b, c, d, f) (emphasis added).

¹² For example, upon receiving a single “input request” for the location of a particular mobile station, multiple “location requests” for that mobile station may be provided to various location determining sources which each may estimate the location of the mobile station using different “wireless location techniques.” See Appendix A, claim elements 27(b, c, d, f).

Claim 27 includes other inconsistent language which further muddles the distinction between the “input requests” and the “location requests.” For example, Claim 27 subsequently refers to “the first request” and “the second request” without identifying whether the claim is referring to the “input requests” or the “location requests”.¹³

first determining ... first output location data according to a first output criteria for the corresponding destination for the first request ...;

second determining ... second output location data according to a second output criteria for the corresponding destination for the second request ...;

It is unclear which “requests” are being referenced. *See* M.P.E.P. § 2173.05(e) (“Similarly, if two different levers are recited earlier in the claim, the recitation of ‘said lever’ in the same or subsequent claim would be unclear where it is uncertain which of the two levers was intended.”).

Claim 10 of the ‘231 Patent suffers from the same maladies as Claim 27 of the ‘484 Patent. (*See* Madisetti Decl. at ¶ 51.) For example, Claim 10 also specifies that “input requests” are received from location requesting sources and “location requests” are provided to location determining sources in response to each “input request.”¹⁴ As with Claim 27, Claim 10 subsequently refers to the “location requests” as being received from the location requesting sources,¹⁵ even though it is the “input requests” (not the “location requests”) that were previously received from the location requesting sources. Moreover, as with Claim 27, Claim 10

¹³ *See* Appendix A, claim elements 27(e, g) (emphasis added).

¹⁴ *See* Appendix A, claim elements 10(b, c) (“receiving, from a plurality of location requesting sources, a plurality of input requests for locations of the mobile stations” and “for each of the input requests, providing to one or more mobile station location determining sources, one or more location requests for location information related to a location of one of said mobile stations”) (emphasis added).

¹⁵ *See* Appendix A, claim elements 10(i, k) (“first obtaining, in response to a first of the location requests received from a first of the requesting sources, first output location data ...” and “second obtaining, in response to a second of the location requests received from a second of the requesting sources, second output location data ...”) (emphasis added).

ambiguously refers to “the first request” and “the second request” without identifying whether the claim is referring to “input requests” or “location requests.”¹⁶

Finally, the specification has no disclosure that distinguishes among different types of requests that are received from location requesting sources, but instead discloses only one type of request that is received from location requesting sources.¹⁷ (*See* Madisetti Decl. at ¶ 48.) Thus, the specification does not resolve this discrepancy regarding the claimed “input requests” and “location requests.” Because it is impossible to distinguish between the “input requests” and the “location requests,” these two claims are invalid for indefiniteness.

2. The phrase “wherein for at least one of said first and second output criteria there is an output criteria for another of the location requests that is different from said at least one output criteria” is insolubly ambiguous

Claim 27 of the ‘484 Patent and Claim 10 of the ‘231 Patent are also indefinite because the phrase “wherein for at least one of said first and second output criteria there is an output criteria for another of the location requests that is different from said at least one output criteria” is insolubly ambiguous.¹⁸ This is an independent basis for invalidating these claims.

For example, Claim 27 of the ‘484 Patent recites “determining ... first output location data according to a first output criteria” and “determining ... second output location data according to a second output criteria.” Similarly, Claim 10 of the ‘231 Patent recites that “the first output location data is obtained according to a first output criteria” and “the second output location data is obtained according to a second output criteria.” Both of these claims then recite

¹⁶ *See* Appendix A, claim elements 10(j, 1) (“wherein the first output location data is obtained according to a first output criteria for the first request” and “wherein the second output location data is obtained according to a second output criteria for the second request”) (emphasis added).

¹⁷ Specifically, “location requests” are the only type of requests disclosed by the specification that are received from location requesting sources. (*See* ‘231 Patent at 10:44-55.) The term “input request” is not used by the specification.

¹⁸ *See* Appendix A, claim elements 10(m) and 27(h).

that “for at least one of the first and second output criteria, there is an output criteria for another of the location requests that is *different* from said at least one output criteria.” However, it is left unexplained what constitutes a “*different*” output criteria. It is unclear whether the “different” output criteria must be a different *type* of criteria (*e.g.*, accuracy criteria vs. granularity criteria), or whether it could be the same type of criteria but with a different *value* (*e.g.*, accuracy criteria of within 30 meters vs. accuracy criteria of within 100 meters). This phrase is also insolubly ambiguous because it is unclear whether the “different” output criteria is associated with, or a part of, the first or second output criteria.

Furthermore, because this language requires there to be a different output criteria “for at least one of” the first and second output criteria, it encompasses the situation where there is a different output criteria for *both* the first and second criteria. However, in that situation, it is insolubly ambiguous whether there is only one “different” criteria for both the first and second criteria *or* whether there are separate “different” criteria for each of the first and second criteria.

Finally, while this phrase recites that “*there* is an output criteria,” it is unclear exactly *where* this different output criteria resides, is accessed, or received.

Taken as a whole, this phrase provides no meaningful metes and bounds for determining the scope of Claim 27 of the ‘484 Patent and Claim 10 of the ‘231 Patent, and accordingly renders these claims indefinite.

VI. CONCLUSION

For the foregoing reasons, independent Claims 1, 10, and 185 of the ‘231 Patent and independent Claim 27 of the ‘484 Patent, and all claims depending therefrom (including asserted dependent Claims 7, 65, 69, 106, 212, and 215 of the ‘231 Patent and asserted dependent Claims 33, 34, and 36 of the ‘484 Patent), should be held indefinite and invalid as a matter of law under 35 U.S.C. § 112, ¶ 2.

Dated: September 25, 2012

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that counsel of record for Plaintiff in the above-captioned action is being served with this document via e-mail, in accordance with Local Rule CV-5(d), on the 25th day of September, 2012.

/s/ Christopher W. Kennerly

Christopher W. Kennerly